IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4286 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESH HARAKHCHAND SHAH & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR CH VORA for Applicant(s) : 1 - 2.
Mr.K.P.Raval,A.P.P. for Respondent(s) : 1,
MR RC JANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/04/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr. K.P.Raval waives service of rule on behalf of the respondent no.1-State while Mr. R.C.Jani, waives service of rule on behalf of the respondent no.2.

2. This application under Section 482 of the Criminal Procedure Code is preferred by the applicants with a prayer to quash and set aside the complaint filed by the respondent no.2 being CR no.I 10/2007 registered with D.C.B, Vadodara City Police Station for the offences punishable under Sections 409, 420, 120(B) and 114 of the Indian Penal Code.

3. The respondent no.2-Ashok Kumar Jaiswal , Sr. Branch Manager, Bank of Baroda, Raopura Branch, in the said complaint has alleged that the present petitioners and other accused persons as named in the complaint were partners of the accused no.1-Apurva Aluminium Corporation a registered partnership firm. According to the complainant, in the year 1993, the accused persons had obtained bank loans with cash credit facility and hypothecation facility to the tune of Rs.10,88,000/- Accordingly, the partners of the firm including the present petitioner had entered into an hypothecation agreement on 2-6-2003. The partners of the firm also executed contract in favour of the bank to the effect that whenever the bank demands the amount of the loan, the petitioners are duty bound to pay the same with interest. As per the hypothecation agreement, the petitioners and other accused were required to prepare raw material, maintain stock in the factory and submit the stock statement to the bank. According to the complainant, the petitioners and other accused persons have misappropriated the goods and have failed to make payment of the loan amount. It is also alleged in the complaint that production in

the factory is at a standstill since last about three years, despite that, the petitioners and other accused persons have prepared false statements of stock and submitted the same to the bank. Under these circumstances, the respondent no.2-complainant had sent notice to the petitioners and other accused persons under sub-section 2 of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon them to pay an amount of Rs.4,42,43,848/- within 60 days from the date of the said notice. The petitioners and other accused persons, however, failed to pay up the amount, and hence, the respondent no.2 has filed the present complaint which is subject matter of challenge in the present petition.

4. It is the case of the petitioners that they have not played any kind of active role or specific role in the alleged commission of the offences as alleged in the complaint. According to the petitioners, the present petitioners and other family members are also partners of the said partnership firm which belongs to the joint family and jointly doing business till March, 2003; that from 1-4-2003, by way of mutual agreement there was family partition of their business known as Pankaj Group of Companies whereby Apurva Aluminium Corporation, Vadodara came to the share of accused no.7-Daksesh Sureshbhai Shah and his family while Pankaj Extrusion came to the share of the petitioners family. However, since there arose a dispute amongst the family members, arbitrators came to be

appointed by them and an interim award was passed by the arbitrator on 2-7-2005. According to the present petitioners, as a result of arbitration award, the present petitioners were not at all concerned with the activities of the partnership firm, namely M/s. Apurva Aluminium Corporation, but other family members were carrying on the activities of the partnership firm. It is also the case of the petitioners that petitioner no.1 is staying at London since last three years, that all dealings with the bank are being handled by accused no.1 Daksesh S.Shah and other accused persons. According to the petitioner no.1, he had by letter dated 17-3-2006 requested the bank to release his personal guarantee against the loans and that there was also an Administrative-cum-Retirement Deed whereby present petitioners and other members had retired with effect from 31-3-2003, however the retirement deed is not signed by the present petitioners. In short, as per the say of the petitioners, they are not at all concerned with the activities of the firm after the date of partition i.e. 1-4-2003. On these grounds, the petitioners have prayed that the complaint is required to be quashed.

5. Heard learned Counsel Mr. C.H.Vora for the petitioners, learned A.P.P. Mr. Raval for the respondent no.1-State and learned Counsel Mr. R.C.Jani for the respondent no.2.

6. Learned Counsel for the petitioners Mr. C.H.Vora argued that after 31-3-2003 in view of the retirement deed, the present petitioners were not at all concerned with the activities of the

accused no.1 firm- M/s Apurva Aluminium Corporation. More so, there was a family partition on 1-4-2003 by mutual agreement of the business known as Pankaj Group of Companies of which the present petitioners and other family members were the partners. According to the present petitioners, as a result of the partition, Apurva Aluminium Corporation came to the share of the accused no.7-Daksesh Suresshbhai Shah and his family members. It is the submission of the learned Counsel that after 31-3-2003, the present petitioners have neither played any specific role nor were they involved in the activities or affairs of the partnership firm. The learned Counsel further submitted that the petitioner no.1 is staying at London since last three years, and therefore, the question of the petitioner no.1 having played any role in the partnership firm does not arise. According to the learned Counsel on perusal of the complaint, no specific role has been attributed to any of the petitioners, and therefore, the complaint is required to be quahed. It is also the submission of the learned Counsel that that the transaction in question is purely a civil transaction, and therefore , also the complaint is required to be quashed.

7. Mr. R.C.Jani learned Counsel for the respondent no.2 has submitted that reading the complaint as a whole, the allegations therein constitute the offences in question. According to him, prima facie, it is found that the present petitioners along with other partners have entered into an hypothecation agreement against the loans granted by the respondent no.2 -complainant and the

partnership firm is still in existence. According to the respondent no.2, the family partition or the interim award passed by the arbitrator owing to disputes amongst the family members cannot absolve the petitioners of the liability to make payment towards the loan granted to them in the year 1993 as that can only be an inter se arrangement and subsequent development amongst the family members about which the respondent no.2 is least concerned. The learned Counsel further submitted that as per the hypothecation agreement, the partnership firm -M/s. Apurva Aluminium Corporation had entered into the transaction with the bank of which the respondent no.2 is the Senior Branch Manager, and therefore the petitioners who are the partners of the firm are liable to make the payment of the remaining amount of the loan. According to the learned Counsel, the cheques are signed by the present petitioners on behalf of M/s. Apurva Aluminium Corporation and the balance-sheet for the financial year 2005-2006 wherein the current capital account is shown in the names of the present petitioners. On these grounds, it is prayed by the learned Counsel, that the complaint cannot be quashed and the petition deserves dismissal.

8. It is settled law that this Court in exercise of its inherent jurisdiction under Section 482 of the Criminal Procedure Code would not make any roving inquiry into the questions of fact and record any findings. It is the duty of the trial Court. This Court has

only to scrutinize the complaint and take the allegations made in the complaint on their face value and quash the proceedings if the complaint does not disclose commission of any offence.Truthfulness or otherwise of the allegations made in the complaint or the evidence collected or the charge-sheet, as the case may be, cannot be gone into by this Court in exercise of its inherent jurisdiction. In the instant case, it is important to note that the respondent no.2 in the complaint had made a specific allegation to the effect that the present petitioners in their capacity as partners of the partnership firm M/s. Apurva Aluminium Corporation had obtained the loan in the year 1993, entered into an hypothecation agreement on 2-6-2003 as also entered into a contract with the bank to the effect that whenever the bank demands the amount, the petitioners are duty bound to pay the same with interest. According to the hypothecation agreement, the petitioners were required to prepare and submit stock statement to the bank, however, from the record it reveals that even though the production in the factory had stopped the present petitioners prepared false statement of stock and submitted the same to the bank, and thereby, misappropriated the goods which shows the dishonest intention of the petitioners. The present petitioners being partners of the firm M/s. Apurva Aluminium Corporation and when the loan had been availed of in the name of the firm, the petitioners would have domain and control over such assets of the firm. When the petitioners are found to have dishonestly misappropriated the goods, it can be

said that they are guilty of the offences alleged in the complaint, more particularly, when this fact is reflected in the complaint. Apart from this, the respondent no.2 in his affidavit-in-reply has stated on oath that the cheques are signed by the petitioners and that the balance-sheet in respect of M/s Apurva Aluminium Corporation for the financial year 2005-2006 shows that the current capital account is in the name of the present petitioners. Moreover, the partnership firm M/s. Apurva Aluminium Corporation is still in existence. The question whether the present petitioners have retired from the partnership firm or that they have not played any specific role after the joint family partition on 1-4-2003 or that they were responsible for the business of the partnership firm at the time of offence are all disputed questions of fact which can only be gone into by the trial Court and it shall always be open to the petitioners to raise such contentions. The contention raised by the learned Counsel for the petitioners that the transaction is of a civil nature also cannot be accepted since an action of a party may have civil as well as criminal consequences. Here, in the instant case, as discussed earlier, the averments in the complaint spell out a criminal offence, and therefore, the complaint cannot be quashed.

9. Learned Counsel for the petitioner has placed reliance on the decision rendered in the case of (1) Indian Oil Corporation vs. NEPC India Ltd and Ors.((2006) 6 Supreme Court Cases 736 and (2) G. Sagar Suri and Another vs.State of U.P. & Ors. After having

carefully examined these authorities in light of the submission urged by the learned Counsel for the petitioners, I am of the view that the decision in Indian Oil Corporation's case (Supra) cannot be made applicable to the facts of the present case. In so far as the decision in D.Sagar Suri's case is concerned, there the complainant had only made an omnibus statement that the first appellant with dishonest intention and misrepresentation got the loan and nothing has been said as to what the misrepresentations were or as to how the Finance Company was duped, and therefore, this decision also cannot be of any assistance to the petitioners.

10. In view of what is discussed herein above, as also, looking to the facts and circumstances and nature of allegations levelled in the complaint, I do not think it just and proper to quash the complaint at this stage in exercise of inherent jurisdiction under Section 482 of the Cr.P.C. The Criminal Misc. Application, therefore, fails and is dismissed. Rule is discharged.

11. However, the officer concerned before whom Complaint being CR no. I 10/2007 registered with DCB Vadodara City Police Station is pending shall dispose of the proceedings without being influenced by any of the observations made in this order, as they are confined only for the purpose of deciding this application.

(M.D.Shah,J.)

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